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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,180	04/29/2005	Peter John James	FISHER-E	7167

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EXAMINER	
O HERN, BRENT T	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
11/12/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,180	JAMES, PETER JOHN	
	Examiner	Art Unit	
	Brent T. O'Hern	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims

1. Claims 1-21 are pending.

WITHDRAWN REJECTIONS

2. All rejections of record in the Office Action mailed 20 June 2008, pages 2-6, paragraphs 1-5 have been withdrawn due to Applicant's amendments in the Paper filed 11 September 2008.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

3. Claims 1-6, 8-11, 13, 16-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US 3,420,671) in view of Fiala et al. (US 4,012,535).

Hess ('671) teaches a method of processing a legume fodder crop and a method of producing an animal feed, including the steps of growing a legume fodder, harvesting the crop, delivering with minimum delay, freshly harvested legume fodder crop in bulk to a feed mill; processing the crop with a hammermill/rotary knives; drying the shredded material to produce a dried animal feed material, suitable for long term storage; mixing the dried material with a syrup or other binder and enzymes that modify the material to improve digestion of the feed, thus, increasing the value of the feed; and the combining the materials into pellets *(See col. 1, l. 19-47 and col. 3, ll. 12-37. It is known that all processed fodder at a feed mill has clearly been previously grown and harvested otherwise it would not exist. Hammermills are known to have different heads, including*

knife-like surfaces, especially when the edges become worn.), however, fails to expressly disclose "providing a cane sugar mill"; "providing a feed mill, said feed mill being located at/adjacent to said cane sugar mill"; "delivering with minimum delay, freshly harvested legume fodder crop to a said feed mill located at/adjacent to a said cane sugar mill"; and "drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill to produce a dried animal feed material, suitable for long term storage" per independent claims 1, 11, 16 and 18; "is delivered to the feed mill in bulk using a transport system/infrastructure of the cane sugar mill" in claim 3, lines 2-3; "wherein: in step (e), the shredded matter is dried using hot flue gas from the sugar mill boiler, or from a separate furnace fired with sugar cane bagasse either fresh from the cane sugar mill or from a stockpile" in claim 6, lines 1-4 and the shredded material being dried.

Fiala ('535) teaches drying feed material *(See col. 13, l. 7 to col. 14, l. 35.)* for the purpose of providing high density dry feed *(See col. 14, ll. 1-35.)*. Furthermore, it known to a person having ordinary skill in the art that once plants are cut they die or die naturally and the inner plant materials become dry through dehydration. Additionally, it is known that if feed materials become excessively wet they will degrade, thus, there is an interest to maintain the integrity of the feed by drying.

Regarding the above phrases with respect to the relative locations of the sugar cane and feed mills and legume fodder field, where the source of heat comes from and what type of equipment is used to transport the material to the mill does not have any material affect on the method of processing legume fodder. Whether the locations are

next to each other, separated by a warehouse, road, are ten miles apart or 100 miles apart or there is not a cane sugar mill at all does not make any difference to the method of processing the legume or affect the product being produced. Whether the heat source comes from a sugar cane mill or from a gas fired boiler makes no difference to the method of processing the legume fodder.

It would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to source the legume fodder from any location that is economically feasible with locations closer to the mill probably being less expensive than locations farther away due to the lower fuel costs involved in transporting. It would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to use any transportation equipment to transport the fodder to the mill with the least expensive mode being preferable. There is clearly motivation to use the least expensive transportation mode since this provides for greater profit. It would have been obvious to a person having ordinary skill in the art to use the least expensive energy source and consider all options available and if the least expensive source is from a neighboring mill then it would have been obvious to use it.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to dry the feed material as taught by Fiala ('535) in Hess ('671) and source the raw material in the above manner from the above location and source the energy as described above in order to provide a food with high density and good integrity at a low cost.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US 3,420,671) in view of Fiala et al. (US 4,012,535) and Kieter (US 2,091,284).

Hess ('671) and Fiala ('535) teach the method discussed above, however, fail to expressly disclose wherein the dried shredded material is separated into coarse (stem) and fine (leaf) dry fibre fractions.

However, Kieter ('284) teaches separating the shredded material into coarse (stem) and fine (leaf) dry fibre fractions *(See p. 2, col. 1, ll. 1-41 and p. 3, col. 1, line 26 to col. 2, l. 25.)* for the purpose of providing a preserved feed material that has a high protein concentration that can be remixed in the final formulation *(See p. 1, col. 2, ll. 3-33 and p. 2, col. 1, ll. 1-41.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to separate the coarse and fine material in order to provide a feed with high protein feed with preserved protein and uniform concentration.

5. Claims 12, 14-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US 3,420,671) in view of Fiala et al. (US 4,012,535) and Myhre (US 6,579,552).

Regarding claims 1, 14 and 19, Hess ('671) and Fiala ('535) teach the method discussed above, however, fails to expressly disclose bailing the dried and shredded material and outloading or containerizing it for transport.

However, Myhre ('552) teaches bailing dried alfalfa hay *(See col. 1, ll. 13-22, col. 3, l. 34 to col. 4, l. 21 and FIGS 1-3.)* for the purpose of providing a compact mass of

hay that can be shipped to foreign countries via containers or other shipping means *(See col. 1, ll. 13-22.)*.

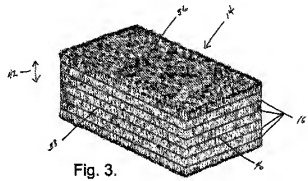

Fig. 3.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to bail the alfalfa hay into a compact mass that can be shipped to distant destinations.

Regarding claim 15, Hess ('671) and Myhre ('552) teach the method discussed above, however, fail to expressly disclose molasses being mixed with dried material (or hay) to increase the nutritional value thereof.

However, Fiala ('535) teaches adding molasses to animal feed *(See col. 1, ll. 55-68, col. 6, ll. 5-20 and Abstract.)* for the purpose of providing an animal with nutrients *(See col. 1, ll. 55-68.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to add molasses to feed as taught by Fiala ('535) in Hess ('671) in order to provide an animal feed with nutrients.

ANSWERS TO APPLICANT'S ARGUMENTS

6. In response to Applicant's arguments *(p. 9, para. 2 to p. 11, para. 1 of Applicant's Paper filed 11 September 2008)* that the prior art does not teach a sugar cane mill being

located at or adjacent to a feed mill and the feed mill's heat being sourced from a sugar cane mill, it is firstly noted that the location of the sugar cane mill and the source of heat has nothing to do with the method of processing legume fodder. Furthermore, all of the terms in Applicant's claims have been fully considered and as discussed above, it would have been obvious to a person having ordinary skill in the art to source raw materials and energy from the locations that have the lowest costs. Raw material that is produced closer to a mill clearly has lower transportations costs since fewer miles need to be traveled, thus, lower total costs with all other things being equal. Furthermore, lower cost energy sources are clearly desirable over more expensive sources no matter their source of origin. Thus, conserving energy is more desirable over wasting energy.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/
Brent T O'Hern
Examiner, Art Unit 1794
October 29, 2008

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794